



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

---

No. 397

---

NELLIE DALE CLEMENS,

*Petitioner,*

*vs.*

WILLIAM L. CLEMENS.

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT  
THEREOF.

---

VIVIAN O. HILL,  
*Counsel for Petitioner.*



# INDEX.

## SUBJECT INDEX.

	Page
Petition for writ of certiorari .....	1
Opinion below .....	1
Jurisdiction .....	2
Statement of the case .....	2
Questions presented .....	3
Statutes involved .....	4
Reasons relied upon for allowance of writ .....	4
Brief in support of petition .....	7
Specification of error .....	7
Argument .....	8
Conclusion .....	11

## TABLE OF CASES CITED.

<i>Barber v. Barber</i> , 62 U. S. 582, 21 How. 582, 16 L. Ed. 226 .....	8
<i>Clemens v. Clemens</i> , 72 Washington Law Reporter 476 .....	7
<i>Davis v. Davis</i> , 305 U. S. 32, 59 S. Ct. 3 .....	8
<i>Parks v. Parks</i> , 72 App. D. C. 93, 116 F. (2d) 556 .....	10
<i>Williams v. State of North Carolina</i> , 317 U. S. 287, 63 S. Ct. 207 .....	8

## STATUTES CITED.

Act of May 26, 1790, c. 11, 28 U. S. C. 687 .....	4
Constitution of the United States, Article IV, Section 1 .....	4
District of Columbia Code, Title 16, Section 403 .....	4, 5, 8, 9
Judicial Code, Section 240(a) as amended by the Acts of February 13, 1925 and June 7, 1934 .....	2
Webster's Unabridged Dictionary (1937) .....	11



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1944**

---

**No. 397**

---

**NELLIE DALE CLEMENS,**

*vs.*

*Petitioner,*

**WILLIAM L. CLEMENS.**

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS, DISTRICT  
OF COLUMBIA.**

---

Nellie Dale Clemens, by her attorney, prays for the issuance of a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia, entered June 12, 1944, in this cause.

**Opinion Below.**

The opinion of the United States Court of Appeals for the District of Columbia is at this time only reported in 72 Washington Law Reporter, 476 (R. 19). A timely application for rehearing was denied by that Court June 30, 1944 (R. 21).

### Jurisdiction.

This Court has jurisdiction under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and of June 7, 1934, and by virtue of the claimed violation of the provisions of the Constitution of the United States.

### Statement of the Case.

This case involves judicial decisions affecting the marital status of the parties hereto rendered in the State of New York, and in the District of Columbia. New York State first acquired jurisdiction over the parties and the subject-matter, when the Supreme Court of that State received the Complaint of petitioner on September 22, 1938, against respondent herein, in which he was personally served in that State, and answered. That court, after a trial of the case, made Findings of Fact, Conclusions of Law, and entered judgment on April 13, 1940, in favor of petitioner, granting her a legal separation from her husband upon the grounds of *cruelty*, *desertion*, and *non-support* (R. 12-15).

In a subsequent proceeding, on July 25, 1941, with personal service upon the husband again, that court held him in contempt for failure to comply with its order for alimony, and enjoined him from commencing any action or actions affecting the matrimonial status of the parties outside the jurisdiction of the State (R. 16, 17). No appeal was ever taken from either judgment and they have long since become *res judicata*.

The husband left the State of New York and came to the District of Columbia, where, on March 10, 1937, he filed a suit in the United States District Court (Equity No. 63-886) for absolute divorce upon the ground of desertion, which was dismissed October 20, 1939, because of failure to

prove the charge. He filed a second suit in that court for absolute divorce upon ground of voluntary separation on November 1, 1939 (Civil Action No. 4617), which was dismissed May 7, 1941, for lack of residence. He filed a third suit in that court on May 7, 1941, Civil Action No. 11-290, for absolute divorce upon ground of five years voluntary separation, in which he was granted an absolute divorce by judgment of March 28, 1943. An appeal was taken, and the United States Court of Appeals for the District of Columbia, on June 12, 1944, in a per curiam opinion, affirmed. A petition for rehearing in that court was denied June 30, 1944.

### Questions Presented.

1. Did the courts of the District of Columbia give full faith and credit to the judgments and proceedings of the Supreme Court of the State of New York in granting the husband an absolute divorce in this case upon the ground of five years *voluntary* separation after the New York court had entered a valid judgment granting petitioner herein a legal separation upon the grounds of cruelty, desertion, and non-support, and had also enjoined him from commencing any action or actions outside the State of New York affecting the marital status of the parties?

2. Where a wife has been granted a legal separation upon the grounds of cruelty, desertion, and non-support, can a husband under the provisions of Title 16, Section 403, District of Columbia Code (1940), thereafter successfully maintain a suit against his innocent wife upon the ground of voluntary separation merely because she does not offer or seek to effect a reconciliation during the period of their separation?

### **Statutes Involved.**

Act of May 26, 1790, c. 11, 28 U. S. C. A. § 687, enacted in conformity with provisions of Article IV, § 1, U. S. Constitution, which directs that,

“Full faith and credit shall be given in each state to the Public Acts, Records and Judicial Proceedings of every state,” providing that judgments, “shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.”

Title 16, Section 403, District of Columbia Code (1940):

“A divorce from the bond of marriage or a legal separation from bed and board may be granted for adultery, desertion for two years, voluntary separation from bed and board for five consecutive years without cohabitation, final conviction of a felony involving moral turpitude and sentence for not less than two years to a penal institution which is served in whole or in part. A legal separation from bed and board may be granted for cruelty. Provided, that where a final decree of divorce from bed and board heretofore has been granted or hereafter may be granted and the separation of the parties has continued for two years since the date of the decree, the same may be enlarged into a decree of absolute divorce from the bond of marriage upon the application of the innocent spouse.

### **Reasons Relied Upon for Allowance of the Writ.**

1. The decision is contrary to the provisions of Article IV, § 1, United States Constitution, and the statute passed in conformity therewith, in that it fails to give full faith and credit to the judgments and proceedings of the Supreme Court of the State of New York between the parties hereto, and to decisions of this Court holding that full faith and



credit, not just some faith and credit, must be extended to the judgments and proceedings of other States in such cases.

2. The construction placed upon Title 16, Section 403, of the District of Columbia Code in this case is erroneous. It does not seem reasonable that Congress intended by its terms to grant a husband an absolute divorce upon the ground of five years *voluntary* separation where he had been guilty of cruel and inhuman treatment of his wife, rendering it unsafe and improper for her to cohabit with him, which fact had been judicially determined by a court of competent jurisdiction, and the question was *res judicata* between the parties.

WHEREFORE it is respectfully submitted this petition for allowance of writ of certiorari should be granted.

VIVIAN O. HILL,  
*Southern Building.*  
*Attorney for Petitioner.*